



CITY OF LODI

AGENDA TITLE: Appeal of GT Auto Sales, 821-B South Cherokee Lane, Lodi, Regarding Public Right-of-way Encroachment Violation at 821 South Cherokee Lane, Lodi - Landscaping Within the Public Right-of-way (**Between** the Curb and Sidewalk Area) - Violation of Section 12.04 of the Lodi Municipal Code

MEETING DATE: August 19, 1992

PREPARED BY: Public Works Director

RECOMMENDED ACTION: That the City Council discuss and take the appropriate action.

BACKGROUND INFORMATION: Attached as Exhibit A is the appeal letter from GT Auto Sales asking that the Council permit them to keep the recently planted landscaping or provide a low-cost solution.

Lodi Municipal Code Section 12.04.370A (attached as **Exhibit B**) prohibits the planting of anything other than **lawn** or sod and also prohibits **the** placement of earth, gravel, or any **other** material within the right-of-way without an encroachment permit. The most **common** type of **encroachment** violation takes place in the "parkway", that area between the curb and sidewalk. Our department acts on approximately three to five of these types of encroachment violations per year. These violations range from planting rose bushes, unauthorized trees and other shrubs to placement of cobbles, gravel, lava rock, redwood surfacing, fencing, etc. Some recent encroachment violations which have been corrected are shown on the attached Exhibits C through I.

Parkway areas are all within the public right-of-way and per Lodi Municipal Code should be accessible and usable by the public. Section 12.04.3708 reads in part:

"No encroachment of any nature will be permitted or maintained which impedes, obstructs or denies such pedestrian or other lawful travel within the limits of the right-of-way of a public street, . . ."

Where cars park adjacent to the parkway, passengers will be stepping out and using the parkway for access to the sidewalk. The City, therefore, has a responsibility to ensure **that** whatever is placed in the parkway area does not create a liability. Our policy has been to allow parkways to be improved only by the planting of lawn or sod, which does not require a **permit**. All trees which are planted must be approved and planted by the City. In keeping with the requirements of Lodi Municipal Code Section 12.04.3708, our department has not issued permits for other types of **parkway** landscaping. The parkway is within the public right-of-way, however, it is the property Owner's responsibility to maintain, including **watering**. The City is responsible for tree maintenance, i.e., trimming, cutting, spraying, removal, etc.

APPROVED

THOMAS A. PETERSON
City Manager

CC:

Appeal of **GT** Auto Sales, 821-8 South Cherokee Lane, Lodi. Regarding Public Right-of-Way Encroachment Violation at 821 South Cherokee Lane, Lodi - Landscaping Within the Public Right-of-Way (Between the Curb and Sidewalk Area) - Violation of Section 12.04 of the Lodi Municipal Code
August 19, 1992
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With respect to Cherokee Lane, a Cherokee Lane landscape master plan was presented to the City Council in January 1967. A copy of this plan is on file at City Hall. Since that date, as vacant parcels have developed or parcels have redeveloped, the City has required that the improvements be installed conforming to this plan. The exception to this has been for street lights, center traffic median and the Council has waived tree planting fronting certain car dealerships. All street improvements, i.e., curb, gutter and sidewalk, and landscaping are the responsibility of the property owner or developer.

Page 13 of the master plan (see Exhibit J) does not show a parkway in front of the subject property at 821 South Cherokee Lane, but shows concrete sidewalk adjacent to the curb with individual tree wells and a planting of crepe myrtle trees. There is no sidewalk fronting the subject parcel, however, there is an asphalt walkway. Requiring conformance with the plan is only required if major improvements are made on site. If the Oberles or their licensed landscape contractor had come in for an encroachment permit, we would not have required them to install sidewalk and tree wells per the plan, but they would have been informed that lawn could be planted without a permit and that a permit would not be issued for their proposed landscaping. We feel it was the responsibility of the Oberles' licensed contractor to ensure that the required permits were obtained. Since the work was done without a permit, it would seem that the licensed contractor has a responsibility to make it right. The landscaped area in question is approximately 630 square feet and has no sprinkler system. In checking with a local landscaping firm, an automatic sprinkler system and sod could be installed for approximately \$700 assuming water is available nearby.

The landscaping on the subject property is shown on Exhibit K. The following areas are of concern:

1. The tree planted that does not conform to the landscape plan and is planted too close to the power pole.
2. As people exit their car during the winter, they will be stepping through a muddy planter to get to the asphalt walkway.
3. As previously pointed out by the City Attorney, the vertical sign, rocks and other obstructions in the parkway can be a liability.

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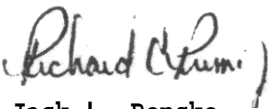
August 19, 1992

Page 3

It is felt that our existing policy of allowing only lawn or sod in parkway areas is appropriate and is in keeping with the overall beautification of Lodi. If we allow each individual parcel to develop to its own taste, there will be no uniformity and no way to enforce what is placed in the public right-of-way. If variations are to be considered, some guidelines need to be developed. This may be an appropriate task for the Site Plan and Architectural Review Committee (SPARC).

Staff recommends that the Oberles' appeal be denied.

FUNDING: Not applicable.


for Jack L. Ronsko
Public Works Director

JLR/lm

Attachments

cc: City Attorney
Mike and Audrey Oberle
Exterior Design Landscape

Exhibit A

July 13, 1992

RECEIVED

52 JUL 13 PM 1:01

ALICE H. RIMON
CITY CLERK
CITY OF LOS ANGELES

LA AUTO SALES
611-B S. Cherokee Dr.
TODD, CA 95240
339-1944

City of Todd

PO Box 3006

Todd, CA 95241

Attn: CITY COUNCIL

Subject: Public Right-of-way located at 821-B S Cherokee Lane
Landscaping in front of 97 AUTO SALES

We have been at this location for 3 years, and all that was ever growing in front of our lot were weeds. Not once did the City come out to maintain this public right-of-way. Over the past 3 years we spent plenty of time and money keeping the weeds under control. Finally, we decided to have a professional come and landscape this area, not only to help enhance our business but to beautify Cherokee Lane also.

Not realizing we had to get a permit from the City, Glen Barker came in on July 7th and told us we had to tear it all out within a week or the City would do it and charge us for it. The area had only been landscaped for a week. The City wasted no time in coming out then, but when it was weeds they made no attempt to do anything! Right now we have very large landscaping rocks (2000 large for one person to pick up), shrubs and one tree. We thought this would be a low maintenance way of bringing some life to this area. We have had nothing but positive enforcement regarding the landscaping from everyone, even people we don't know. Please let us know what we can do to keep this area looking nice without costing us much more money. We realize the City probably has a Master Plan for Cherokee Lane but until then can we please keep this area like it is?

Mike and Audrey Oberle

97 AUTO SALES

OWNERS

cc: Jack Romano

EXTERIOR DESIGN LANDSCAPE

Design and Consultation

St. Contr. Lic. # 318809

1820 S. School St. (209) 369-2076 Lodi-CA. 95240

Fax 943-1243

INVOICE

To G.T. Auto - Attn Mike O.
Cherokee Lane
Lodi CA. 95240

Date 6-26-92

Job G.T. Auto

Description:

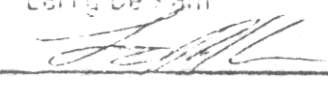
1. Spray existing weeds, clear debris from area to be landscaped
2. Add approx. 4 yards sandy loam for planting
3. Plant one pine tree and several asstd. plants
4. Add moss rock in planter area.
5. apply ronstar pre-emergant for weed control

TOTAL AMOUNT DUE UPON

RECEIPT OF INVOICE:

-- \$ 625.00 --

Larry De Kam

SIGNED: 

12.04.360

kind of tree proposed, will impede or inconvenience travel on a public highway or unduly disturb the right of way thereof, or in any way impede construction or maintenance of necessary facilities.

C. Trimming of trees will be permitted only when and in the manner authorized by a permit issued pursuant to this chapter in order that the shapeliness of the tree may be preserved.

D. An application for removal of a tree will be approved and a permit issued only when a necessity for removal exists, and adjacent property owners concur, or when deemed necessary by the director. When a tree is removed under authority of a permit, the entire stump shall be taken out for a distance of at least two feet below the ground surface unless otherwise specified in the permit, and the hole backfilled and tamped. All debris from trimming or removal shall be removed from the site and the right-of-way restored to its former condition. (Prior code § 9A-36)

12.04.370 Hedges, fences or other structures.

A. No hedge, shrub or other planting whatever, fence or similar structure, or earth, gravel or any other material of any nature, except as provided in Section 12.04.380, shall be planted, erected, maintained or placed in a right-of-way without a permit.

B. No hedge, shrub or other planting whatever, fence or similar structure shall be maintained across any existing walkway in a sidewalk area or shoulder. The intent of this restriction is to keep free a walkway for pedestrians or other lawful

public travel. Without interference by or with vehicular travel. No encroachment of any nature will be permitted or maintained which impedes, obstructs or denies such pedestrian or other lawful travel within the limits of the right-of-way of a public street, or which impairs adequate sight distance for safe pedestrian or vehicular traffic.

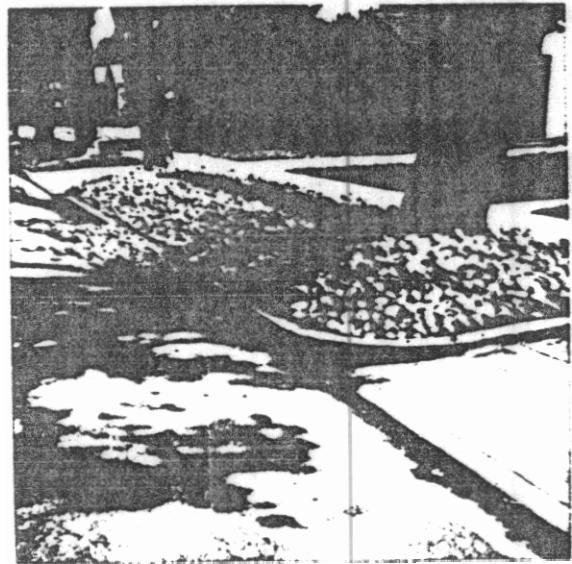
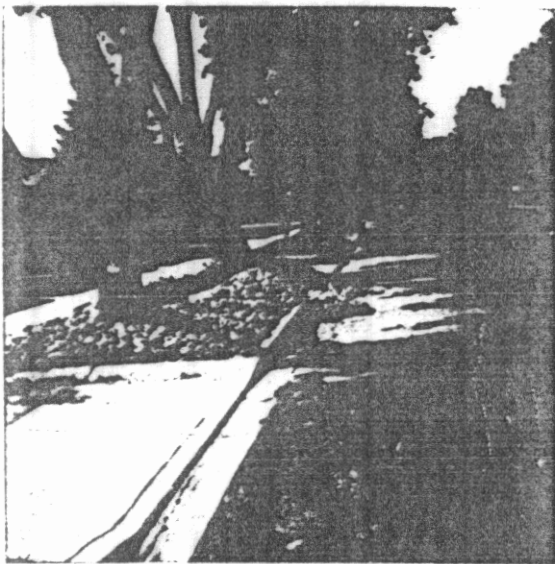
C. The permittee or the owner of the adjacent property shall maintain the hedges, shrubs, walls, fences or similar structures erected for landscaping purposes in a neat and orderly condition at all times. If the encroachment is not maintained as specified in this chapter the director may direct the permittee or property owner to remove the encroachment and restore the right-of-way to its former condition, at the expense of the permittee or property owner. (Prior code § 9A-37)

12.04.380 Lawns.

A. Other provisions of this chapter notwithstanding, it is lawful for a person to plant and maintain a lawn of any grass, of a type not prohibited by other law, within the right-of-way of a public street without a written permit. However, the lawn shall not extend into the traveled way of the public street nor into the drainage ditches, gutter or other drainage facilities.

B. The general public may not be denied the use of the planted area for pedestrian or other lawful travel. The city may use the planted area for any purpose whatever, and may issue a permit to any applicant to go on to perform the work or otherwise encroach pursuant to this

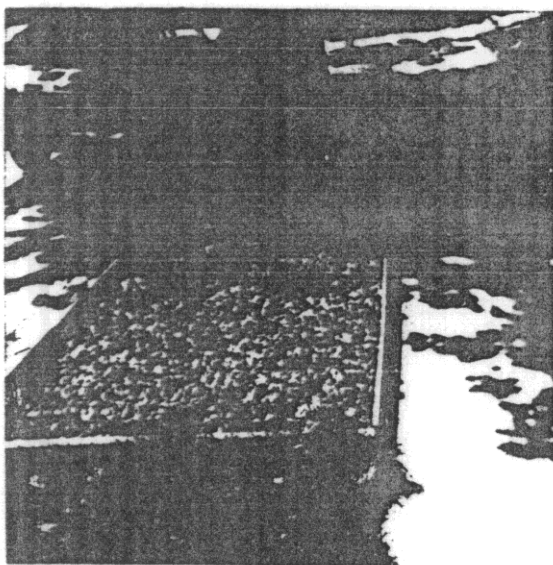
Exhibit C



Cobbles and Shrubs (not shown) Planted in Center of Parkway

720 South Church Street
May 13, 1992

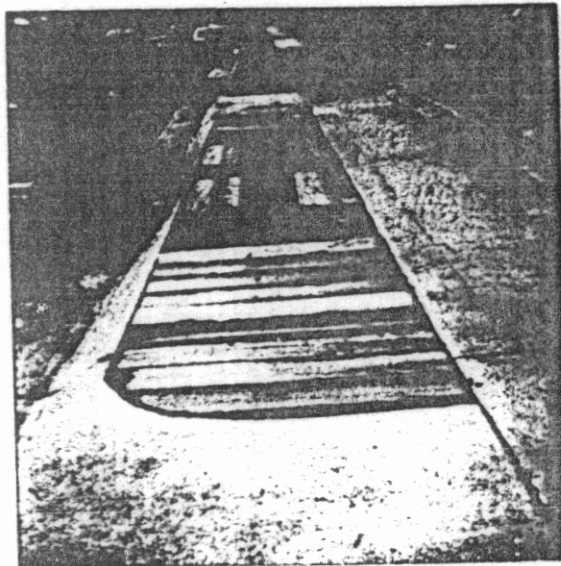
Exhibit D



Red Lava Rock in Raised Border

607 WEST ELM STREET
JULY 12, 1990

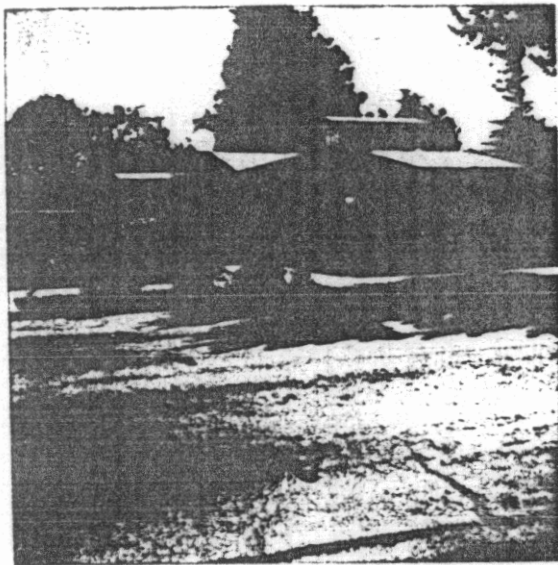
Exhibit E



Rex Gore
309 Forrest Avenue
March 14, 1991

Redwood Surfacing

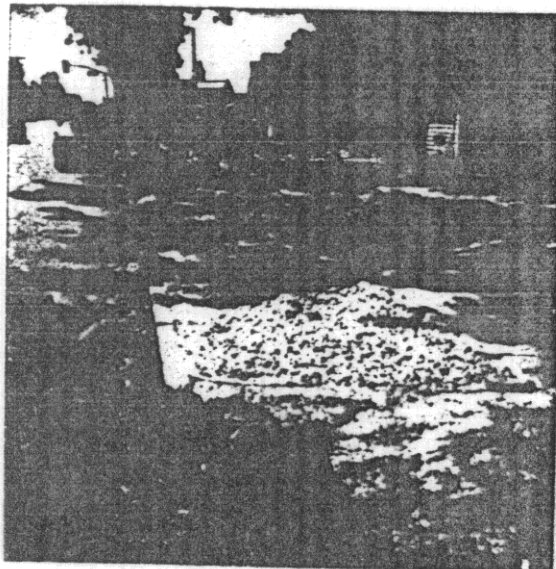
Exhibit F



522 EAST PINE STREET
APRIL 1990

Inappropriate Trees

Exhibit G



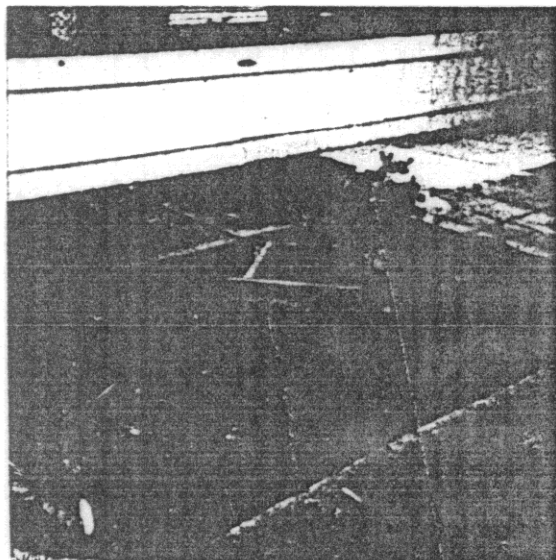
7-12-90

Gravel on Plastic Lining

107 WEST LOCKEFORD STREET

July 12, 1990

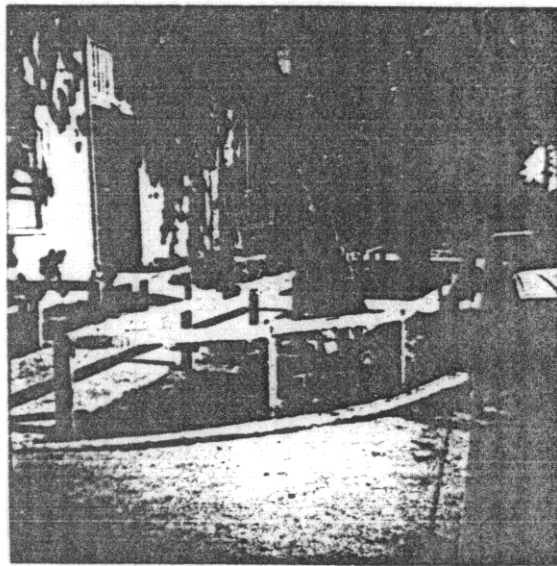
Exhibit H



Rosebush and Raised Planter

522 EAST PINE STREET
MAY 30, 1990

Exhibit I



Parkway Fencing

117 North Central Avenue
June 26, 1990

Exhibit K



Inappropriate Tree, Shrubs and Decorative Rocks and Sign

821 South Cherokee Lane
July 7, 1992

CITY COUNCIL

JAMES W. PINKERTON, Mayor
PHILLIP A. PENNINO
Mayor Pro Tempore
DAVID M. HINCHMAN
JACK A. SIEGLOCK
JOHN R. (Randy) SNIDER

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
P.O. Box 3006
LODI, CALIFORNIA 95241-1910
(209) 334-5634
FAX (209) 333-6795

THOMAS A. PETERSON
City Manager
ALICE M. REIMCHE
City Clerk
BOB MCNATT
City Attorney

August 21, 1992

Mr. and Mrs. Mike Oberle
G. T. Auto Sales
821-B S. Cherokee Lane
Lodi, CA 95240

Dear Mr. and Mrs. Oberle:

This letter will confirm action taken by the Lodi City Council at its regular meeting of August 19, 1992, whereby following a public hearing to consider your appeal regarding a public right-of-way encroachment violation at 821 S. Cherokee Lane, Lodi (landscaping within the public right-of-way between the curb and sidewalk area), the City Council granted the appeal and determined that the subject landscaping could remain until there is a uniform plan adopted for the area.

Should you have any questions regarding this matter, please do not hesitate to call.

Very truly yours,


Alice M. Reimche
City Clerk

AMR/jmp

DECLARATION OF MAILING

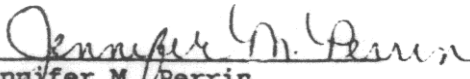
On July 17, 1992 in the City of Lodi, San Joaquin County, California, I deposited in the United States mail, envelopes with first-class postage prepaid thereon, containing a copy of the Notice attached hereto, marked Exhibit "A"; said envelopes were addressed as is more particularly shown on Exhibit "B" attached hereto.

There is a regular daily communication by mail between the City of Lodi, California, and the places to which said envelopes were addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 17, 1992, at Lodi, California

Alice M. Reimche
City Clerk


Jennifer M. Perrin
Deputy City Clerk



CARNEGIE FORUM

For information regarding this Public Hearing
Please Contact:

Alice M. Reimche
City Clerk
Telephone: 333-8702

NOTICE OF PUBLIC HEARING

August 19, 1992

NOTICE IS HEREBY GIVEN that on Wednesday, at the hour of 7:30 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing to consider the following matter:

- a) Appeal of G. T. Auto Sales, 821-B South Cherokee Lane, Lodi regarding public right-of-way encroachment violation at 821 South Cherokee Lane, Lodi - landscaping within the public right-of-way (between the curb and sidewalk) - violation of Section 12.04 of the Lodi Municipal code.

All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.


If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Fine Street, at or prior to the Public Hearing.

By Order Of the Lodi City Council:


Alice M. Reimche
City Clerk

Dated: July 15, 1992

Approved as to form:


Bobby W. McNatt
City Attorney

APPEAL OF G. T. AUTO SALES
MAILING LIST
EXHIBIT B

G. T. Auto Sales
821-B South Cherokee Lane
Lodi, CA 95240

Public Works Department

CITY COUNCIL

JAMES W. PINKERTON, Mayor
PHILLIP A. PENNINO
Mayor Pro Tempore
DAVID M. HINCHMAN
JACK A. SIEGLOCK
JOHN R. (Randy) SNIDER

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 334-5634
FAX (209) 333-6795

August 12, 1992

THOMAS A. PETERSON
City Manager
ALICE M. REIMCHE
City Clerk
BOB McNATT
City Attorney

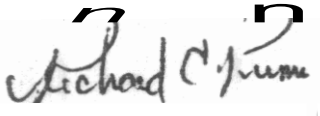
Mr. and Mrs. Mike Oberle
GT Auto Sales
821-B S. Cherokee Lane
Lodi, CA 95240

SUBJECT: Appeal of 6T Auto Sales, 821-8 South Cherokee Lane, Lodi.
Regarding Public Right-of-Way Encroachment Violation at
821 South Cherokee Lane. Lodi - Landscaping Within the Public
Right-of-Way (Between the Curb and Sidewalk Area) - Violation
of Section 12.04 of the Lodi Municipal Code

Enclosed is a copy of background information on an item that will be
discussed at the City Council meeting on Wednesday, August 19, 1992. at
7:30 p.m. The meeting will be held in the City Council Chamber, Carnegie
Forum, 305 West Pine Street. You are welcome to attend.

If you wish to communicate with the City Council. please contact
Alice Reimche, City Clerk, at (209) 333-6702.


If you have any questions abwt the item, please call Richard Prima or me
at (209) 333-6706.



for Jack L. Ronsko
Public Works Director

JLR/im

Enclosure

cc: City Clerk 

CITY COUNCIL

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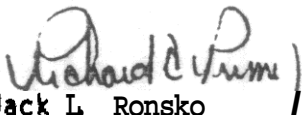
Exterior Design Landscape
1820 S. School Street
Lodi. CA 95240

SUBJECT: Appeal of 6T Auto Sales, 821-B South Cherokee Lane, Lodi,
Regarding Public Right-of-way Encroachment Violation at
821 South Cherokee Lane, Lodi - Landscaping Within the Public
Right-of-Way (Between the Curb and Sidewalk Area) - Violation
of Section 12.54 of the Lodi Municipal Code

Enclosed is a copy of background information on an item that will be
discussed at the City Council meeting on Wednesday, August 19, 1992. at
7:30 p.m. The meeting will be held in the City Council Chamber, Carnegie
Forum, 305 West Pine Street. You are welcome to attend.

If you wish to communicate with the City Council, please contact
Alice Reimche, City Clerk, at (209) 333-6702.

If you have any questions about the item, please call Richard Prima or me
at (209) 333-6706.


Jack L. Ronsko
Public Works Director

JLR/lm

Enclosure

cc: City Clerk ✓